

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

JERRY LEE PITMAN, #1680445	§	
VS.	§	CIVIL ACTION NO. 6:17cv321
MICHAEL A. COLLUM	§	

ORDER ADOPTING THE REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRTE JUDGE

Plaintiff, Jerry Lee Pitman, an inmate confined at the Coffield Unit within the Texas Department of Criminal Justice (TDCJ), *pro se*, filed a complaint under 28 U.S.C. §1983 complaining of alleged violations of his constitutional rights regarding an alleged excessive force violation. Pitman is suing Captain Michael Collum. The case was referred to the United States Magistrate Judge, the Honorable Judge K. Nicole Mitchell.

On November 17, 2017, Defendant Collum filed a motion for summary judgment, (Dkt. #16). Defendant Collum maintained that the use-of-force was entirely justified and well within constitutional parameters. Subsequently, on August 6, 2018, after reviewing the pleadings and summary judgment evidence, the Magistrate Judge recommended that Defendant Collum's motion should be granted for any claims for monetary damages in his official capacity; however, in all other respects, she recommended the motion be denied, (Dkt. #25). The Magistrate Judge determined that disputed material facts exist in this case. A copy of this Report was sent to both parties at their addresses. The docket shows that Pitman received a copy of this Report on August 22, 2018, (Dkt. #26). However, to date, no objections to the Report have been filed by either party.

Accordingly, both parties are barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from

appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Auto. Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

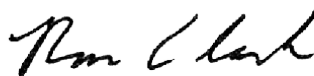
The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly, it is

**ORDERED** that the Report of the Magistrate Judge, (Dkt. #25), is **ADOPTED** as the opinion of the Court. Furthermore, it is

**ORDERED** that Defendant Collum's motion for summary judgment, (Dkt. #16), is **GRANTED** for any claims for monetary damages brought against him in his official capacity. In all other aspects, the motion for summary judgment is **DENIED**.

**So Ordered and Signed**

Sep 23, 2018



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Ron Clark, Senior District Judge